Canada Industrial Relations Board Conseil canadien des relations industrielles

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# Reasons for decision

Fredericton International Airport Authority Inc.,

*applicant,*

*and*

Public Service Alliance of Canada,

*respondent.*

Board File: 29398-C
Neutral Citation: 2012 CIRB **641**
May 17, 2012

The Canada Industrial Relations Board (the Board) was composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. Norman Rivard and Robert Monette, Members.

**Parties' Representatives of Record**

Mr. Clarence Bennett, for the Fredericton International Airport Authority Inc.;
Ms. Edith Bramwell, for the Public Service Alliance of Canada.

[1] On May 1, 2012, the Fredericton International Airport Authority (FIAA or the employer) made an application to the Board under section 87.4(8) of the *Canada Labour Code (Part I Industrial Relations)* (the *Code*), requesting that the Board direct the employer and the Public Service Alliance of Canada (PSAC or the union) to resolve their on-going collective bargaining dispute by means of Total Package Final Offer Selection.

[2] Neither party requested an oral hearing and, after reviewing the written submissions, the Board was satisfied that it had sufficient information on which to base a decision. The Board therefore exercised its discretion under section 16.1 of the *Code* to determine the matter without an oral hearing. By administrative letter dated May 16, 2012, the parties were advised that the Board had decided to dismiss the application. These are the reasons for that decision.

**I–Background**

[3] The collective agreement between the FIAA and the PSAC, applicable to a bargaining unit of some 23 airport employees, expired on April 30, 2009. The parties have been engaged in collective bargaining for its renewal, without success. In accordance with section 87.4(1) of the *Code*, the parties entered into a maintenance of activities agreement (MOAA) on October 11, 2011. That agreement was accepted by the Board on October 17, 2011 and, since that date, has had the same effect as an order of the Board.

[4] The members of the bargaining unit commenced legal strike action on February 13, 2012. By virtue of the MOAA, 16 of the 23 employees in the bargaining unit were required to report for work. Winter operations ceased as of March 31, 2012. Without the seasonal (winter) employees, 12 of the remaining 17 regular employees have continued working since April 1, 2012, in order to provide the services that the parties have agreed are required to prevent an immediate and serious danger to public health or safety. Although the parties have had the benefit of both conciliation and mediation assistance, bargaining remains at an impasse and no further negotiation meetings were scheduled at the time that the employer filed the instant application.

**II–The Law**

[5] In *I.M.P. Group Limited - Aerospace Division*, 2008 CIRB 408, the Board explained its approach to applications made under section 87.4(8) of the *Code*:

[17] The relevant provisions of the *Code* read as follows:

> 87.4(1) During a strike or lockout not prohibited by this Part, the employer, the trade union and the employees in the bargaining unit must continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public.
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> ...
>
> (8) Where the Board is satisfied that the level of activity to be continued in compliance with subsection (1) renders ineffective the exercise of the right to strike or lockout, the Board may, on application by the employer or the trade union, direct a binding method of resolving the issues in dispute between the parties for the purpose of ensuring settlement of a dispute.

[18] The purpose of these provisions was explained in *Hudson Bay Port Company*, 2004 CIRB 296 at paragraph 39, as follows:

> [39] The purpose of this section is to ensure that the safety and health of the public is protected during a legal work stoppage. Before the Board can consider whether to impose the form of relief set out in section 87.4(8), the Board must first be satisfied that the section 87.4(1) level of activity to be continued, in order to prevent an immediate and serious danger to the safety or health of the public, renders ineffective the exercise of the right to strike or lockout. ...

[19] **Thus, when seized of an application pursuant to section 87.4(8) of the *Code*, the Board must first determine whether the level of activity to be continued to prevent an immediate and serious danger to the health and safety of the public would render ineffective the right to strike or lockout.**

[20] The Board then has the discretion to order that the outstanding issues between the parties be resolved by a binding method of resolution. In exercising its discretion, the Board must be concerned that the binding method of resolution would resolve the essential matters between the parties and would be consistent with the objectives of the *Code* (see *Nav Canada*, 2003 CIRB 214).

(emphasis added)

## III–Positions of the Parties

### A–The Employer

[6] The employer points out that, as of the date of its application, the strike had been in progress for 77 days. During that time, the airport experienced only two delayed takeoffs, which were due to weather events. No flights have been cancelled because of the strike. During the strike, the airport has continued to have the best record in the region for reliability, and traffic has grown by more than

ten percent, its best growth rate in years. The employer argues that this is evidence that the strike is and has been ineffective and could "essentially last forever," without impact to the FIAA.

[7] The employer requested that the Board find that the level of service to be continued under the MOAA has rendered the strike ineffective and order that all outstanding issues in dispute be referred to final and binding determination by an arbitrator using a process of Total Package Final Offer Selection.

**B–The Union**

[8] The union strenuously rejects the suggestion that its strike has been ineffective. It contends that this collective bargaining dispute is capable of resolution through meaningful negotiations, and states that it is prepared to return to the bargaining table if the employer indicates a willingness to compromise on key issues. It alleges that the strike has had an impact on the employer's operations, and in particular on the work environment, which it characterizes as "toxic."

[9] The union also alleges that the strike has forced the employer to assign managers to perform bargaining unit work and to make contingency plans for a Royal Visit by His Highness, the Prince of Wales and the Duchess of Cornwall.

**IV–Analysis and Decision**

[10] In most cases that come before the Board under section 87.4(8) of the *Code*, the parties are in agreement that the level of service required to be provided under an MOAA would render the exercise of the right to strike or lockout ineffective. In such cases, the issue for the Board relates to the appropriate method of resolving the outstanding collective bargaining dispute. However, in this case, the parties have a more fundamental disagreement, namely whether the statutory precondition for the exercise of the Board's authority to impose a binding method of dispute resolution has been met.

[11] The Preamble to the *Code* sets out the philosophy and values that underlie all of the statute's provisions. In particular, the Preamble reflects Parliament's support for collective bargaining as the preferred method of dispute resolution. When seized with an application under section 87.4, the Board's duty is to interpret and apply this provision in a way that promotes the statutory objectives of the *Code* (*Canadian National Railway Company*, 2005 CIRB 314).

[12] Section 87.4(8) of the *Code* creates an exception, in certain circumstances, to this commitment to free collective bargaining (see *City of Ottawa*, 2009 CIRB 447). In the Board's view, provisions such as this, which deprive the parties of their statutory rights, should be carefully and narrowly construed.

[13] Superficially, one might find it reasonable to conclude that a work stoppage that presently involves only five out of seventeen active employees in the bargaining unit could have little impact on the employer's operations. However, in this case, the union vehemently denies that the strike by the members of its bargaining unit at the Fredericton airport has been ineffective, and affirms its belief that the labour dispute can still be resolved through meaningful negotiations. Whether the union's belief is well-founded or not, under these circumstances it would be contrary to the purpose and objectives of the *Code* for the Board to prevent or interfere with the prospect of a negotiated settlement. In balancing the various rights and obligations contained in the *Code*, the Board must, to the greatest extent possible, give effect to the statutory right of employees and their employers to engage in free collective bargaining and make use of such economic sanctions as are available to them to enforce their respective demands. Accordingly, the presumption in favour of collective bargaining is a strong one and significant evidence is required to persuade the Board to remove that right.

[14] On the basis of the evidence presented by the parties in this case, the Board is unable to conclude that the exercise of the right to strike by the Fredericton airport employees represented by the PSAC has, as of this date, been rendered ineffective by the level of activity prescribed in the MOAA as necessary to comply with section 87.4(1) of the *Code*. Accordingly, the employer's application pursuant to section 87.4(8) of the *Code* must be dismissed. In view of this result, it is not

necessary for the Board to consider the employer's request that an alternative method of dispute resolution through Final Offer Selection be imposed on the parties.

This is a unanimous decision of the Board.

Elizabeth MacPherson
Chairperson

Norman Rivard
Member

Robert Monette
Member